WORLD TRADE ORGANIZATION | 双语教材

Understanding the WTO Law Through Cases

WTO法律制度

——以案说法（一）

最惠国待遇
国民待遇
GATT一般例外

朱榄叶◎编著

法律出版社
LAW PRESS·CHINA

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编写说明

作为世界上成员最多的国际经济组织，世界贸易组织（World Trade Organization，WTO）成立17年来对世界经济的发展的作用是有目共睹的。WTO法律制度作为一类独特的国际法律制度，自WTO成立以来就受到广泛关注，相关的专著、论文不胜枚举。本教材选择WTO争端解决机构的专家组/上诉机构报告，通过这些报告来了解WTO基本原则和实践。WTO争端解决机制专家组/上诉机构报告是研究WTO各项规定最好的资料。但专家组和上诉机构报告的篇幅都很长，一般有150～500页，甚至长达1600多页，而且每一个案件通常涉及多个法律问题，要全文阅读理解，对大学本科同学有一定困难。

编写者根据多年的研究及教学经验，对专家组和/或上诉机构报告作了删节，每一个报告只保留对一个法律问题的分析内容，而以中文对案件所涉及的措施作概要介绍，以便于学生阅读理解。

本书选取的是涉及WTO的最惠国待遇原则、国民待遇原则和GATT一般例外的案例。

案例中段落的编号是为了方便阅读与教学而保留的，由于对原文作了删节，编号与原文不同。编者还删除了与内容无关的注释。要阅读报告原文的学生可以从WTO官方网站http://www.wto.org下载。

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第三部分 GATT一般例外

第一部分　最惠国待遇

简　介

最惠国待遇(Most Favoured Nation Treatment)是WTO非歧视原则的具体体现之一。最惠国待遇的含义是:一个WTO成员给予任何国家(无论其是否WTO成员)的货物、服务及服务提供者、知识产权权利人的任何优惠待遇,必须立即无条件地给予WTO所有其他成员的货物、服务及服务提供者和知识产权权利人。

最惠国待遇分别规定在GATT1994第1条、GATS第2条和TRIPS协定第6条。

GATT第1.1条:"在对输出或输入、有关输出或输入及输出入货物的国际收支转账所征收的关税和费用方面,在征收上述关税和费用的方法方面,在输出或输入的规章手续方面,以及在本协定第3条第2款及第4款所述事项方面,一缔约方对原产于或运往其他国家的产品所给予的利益、优惠、特权或豁免,应当立即无条件地给予原产于或运往所有其他缔约方的相同产品。"根据该条规定,无条件的最惠国待遇就是指缔约一方现在和将来给予任何第三方(包括非缔约方)在贸易上的特权、优惠或豁免,应当立即无条件地给予缔约对方。无条件的最惠国待遇是WTO的基石。

GATS第2.1条:"就本协定涵盖的人和措施而言,每一成员对于人和其他成员的服务和服务提供者,应立即和无条件地给予不低于其给予人和国家同类服务和服务提供者的待遇。"

TRIPS协定第4条:"对于知识产权保护而言,一成员对任何其他国家国民给予

的人和利益、优惠、特权或豁免,应立即无条件地给予其他成员的国民。”

最惠国待遇原则也存在一些例外,主要有以下四种情形:一是由关税同盟和自由贸易区等形式出现的区域经济安排,在这些区域内部实行的是一种比最惠国还要优惠的“优惠制”。WTO 成员方可参加此类区域经济一体化安排,对相互间的货物贸易或服务贸易实质上取消所有限制,而区域外的 WTO 成员方则不能享受这些成果。当然,区域内部的成员方不能提高它在参加一体化安排之前对区域外成员方所设立的贸易限制。

二是对发展中国家实行的差别和特殊待遇(如普遍优惠制),其根据是 1979 年东京回合通过的“关于有差别与更优惠待遇、对等与发展中国家充分参与的决定”(通称“授权条款” Enabling Clause)。据此,在关税方面,允许发达国家通过制定“普遍优惠制方案”(简称“普惠制方案”)对发展中国家出口的制成品和半制成品以及某些初级产品提供普遍的和非互惠的比最惠国关税还要优惠的关税优惠。发展中国家之间也可以订立区域性或全球性贸易安排,相互给予关税优惠。在履行有关非关税措施的规则方面,发展中国家可享受差别的和更为优惠的待遇。

三是边境贸易。WTO 允许其成员方为便利毗邻国家间的边境贸易,对毗邻国家给予更多优惠,包括关税优惠。

四是在知识产权领域,允许各成员方对最惠国待遇原则保留一些例外。一成员方可对下述权利不适用最惠国待遇原则:(1)该成员方在一般司法协助国际协定中享有的权利;(2)对 TRIPS 协定下未作规定的有关表演者、录音制品制作者和广播组织的权利;(3)在 WTO 正式运行前已生效的国际知识产权保护公约(包括《伯尔尼公约》和《巴黎公约》)中享有的权利。

加拿大影响汽车工业的某些措施

Canada-Certain Measures Affecting the Automotive Industry

案件背景

加拿大根据一定条件对在其境内设立的汽车制造商给予免税进口汽车的优惠措施。根据加拿大的规定，要获得进口税减免的优惠，加拿大国内合格制造商的汽车产品国内生产量（某些情况下包括产品零部件）必须达到加拿大附加值（Canada Value Added，CVA）最低数量要求，并且其国内汽车产品的生产与在加拿大的销售之间保持一个最低的比率。

进口税豁免最初源于加拿大与美国于1965年1月达成的汽车协定，当时GATT工作组曾经确认这一措施不符合GATT。后经美国要求，这一措施根据GATT第25.5条得到豁免，1996年年底，这一豁免又得以延长一年。1989年美加达成自由贸易协议，规定从1998年1月1日起对符合原产地规定的汽车产品取消关税。随着北美自由贸易协议的执行，美加自由贸易协议于1994年1月1日中止执行。根据协议对从美国进口的汽车产品从1998年1月1日起，对墨西哥进口的产品从2003年1月1日起关税完全取消。纠纷发生时，上述免税措施通过加拿大1998年《汽车产品税则》（MVTO1998）和一系列的《特别免税条令》（Special Remission Orders，SROs）实施。

1995年4月10日加拿大财政部发布了MVTO1998的获益人清单。在附录中列出了33家受益公司，其中4家是小汽车制造商，7家是公共汽车制造商，27家是特种商用车制造商。4家小汽车制造商分别是克莱斯勒（加拿大）有限公司，福特汽

车公司(加拿大)有限公司,通用汽车(加拿大)有限公司及沃尔沃(加拿大)有限公司。加拿大财政部备忘录发布了 SROs 的获益人清单,有 63 家受益公司,其中 2 家是小汽车制造商,5 家是公共汽车制造商,59 家是特种商用车制造商。①

欧共体和日本认为加拿大的规定违反了 GATT(关税与贸易总协定 1994)、TRIMs 协议(《与贸易有关的投资措施协议》)、SCM 协议(《补贴与反补贴措施协议》)及 GATS(《服务贸易总协定》)的相关条款。

专家组报告节选 Excerpt from the Report of the Panel

CLaims Under Article I:1 of the GATT

1. As described above in the introductory section of the findings, Canada accords an import duty exemption on motor vehicles if imported by importers who meet certain conditions. This import duty exemption is provided for in the MVTO 1998 and certain SROs.

2. The European Communities and Japan claim that this import duty exemption is inconsistent with Article I:1 of the GATT, which provides in relevant part:

"With respect to customs duties and charges of any kind imposed on or in connection with importation ... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in ... any other country shall be accorded immediately and unconditionally to the like product originating in ... the territories of all other contracting parties."

3. The parties do not dispute that the import duty exemption is an "advantage" within the meaning of Article I:1 with respect to "customs duties and charges of any kind on or in connection with importation". It is also not in dispute that there are

① 报告原文如此。根据所给数字应当有 66 家,可能其中有企业生产不同种类受益车型。

imported products which do not benefit from this exemption which are like imported products which benefit from the exemption.

4. Two main arguments have been advanced with respect to the alleged inconsistency of this import duty exemption with Article I:1. Firstly, Japan argues that the import duty exemption is inconsistent with Article I:1 because, by conditioning the exemption on criteria which are unrelated to the imported product itself, Canada fails to accord the exemption immediately and unconditionally to like products originating in the territories of all WTO members. Secondly, both the European Communities and Japan argue that the limitation of the eligibility for the import duty exemption to certain motor vehicle manufacturers is inconsistent with Article I:1 on the grounds that it entails *de facto* discrimination in favour of products of certain countries.

Whether the import duty exemption is awarded "immediately and unconditionally"

5. We first consider the argument of Japan that, by making the import duty exemption conditional upon criteria which are unrelated to the imported product itself, Canada fails to accord the import duty exemption immediately and unconditionally to like products originating in all WTO members. By "criteria unrelated to the imported products themselves," Japan means the various conditions which confine the eligibility for the exemption to certain motor vehicle manufacturers in Canada.

6. We note that in developing this argument, Japan refers to the Concise Oxford Dictionary definition of the word "unconditional" as meaning "not subject to conditions", and cites *Indonesia Autos* and *Belgian Family Allowances*, as well as the *Working Party Report on the Accession of Hungary*, as authority for the proposition that the subjecting of an advantage to any condition unrelated to the product is inconsistent with Article I:1.

7. We also recall Canada's response that Japan misinterprets the "immediately and

unconditionally" clause in Article I:1 and that Article I:1 contains no prohibition of origin-neutral terms and conditions on importation that apply to the importers as opposed to the products being imported. According to Canada, Article I:1 prohibits only conditions related to the national origin of the imported product. Canada thus argues that it is entitled to treat like products differently so long as the distinction in treatment is based on criteria other than national origin. Canada argues that in the instant case the conditions under which the import duty exemption is accorded are consistent with Article I:1 in that they are based on the activities of importing manufacturers and not on the origin of the products. Canada further argues that to hold otherwise would be to "read Article II out of the GATT", given that Article II specifically contemplates tariff bindings being subject to "terms, conditions or qualifications".

8. We note that the argument of Japan that the import duty exemption is inconsistent with Article I:1 because it is conditioned upon criteria that are unrelated to the imported products is distinct from Japan's argument that the import duty exemption violates Article I:1 because it discriminates in practice in favour of products of certain countries. Thus, Japan advances an interpretation of Article I:1 which distinguishes between, on the one hand, the issue of whether the advantage arising out of the import duty exemption is accorded "unconditionally" as required by Article I:1, and, on the other, the issue of whether that advantage is accorded without discrimination as to the origin of products.

9. As explained below, we believe that this interpretation of Japan does not accord with the ordinary meaning of the term "unconditionally" in Article I:1 in its context and in light of the object and purpose of Article I:1. In our view, whether an advantage within the meaning of Article I:1 is accorded "unconditionally" can not be determined independently of an examination of whether it involves discrimination between like products of different countries.

10. Article I:1 requires that, if a member grants any advantage to any product originating in the territory of any other country, such advantage must be accorded "immediately and unconditionally" to the like product originating in the territories of all

other members. We agree with Japan that the ordinary meaning of "unconditionally" is "not subject to conditions". However, in our view Japan misinterprets the meaning of the word "unconditionally" in the context in which it appears in Article I:1. The word "unconditionally" in Article I:1 does not pertain to the granting of an advantage *per se*, but to the obligation to accord to the like products of all members an advantage which has been granted to any product originating in any country. The purpose of Article I:1 is to ensure unconditional MFN treatment. In this context, we consider that the obligation to accord "unconditionally" to third countries which are WTO members an advantage which has been granted to any other country means that the extension of that advantage may not be made subject to conditions with respect to the situation or conduct of those countries. This means that an advantage granted to the product of any country must be accorded to the like product of all WTO members without discrimination as to origin.

11. In this respect, it appears to us that there is an important distinction to be made between, on the one hand, the issue of whether an advantage within the meaning of Article I:1 is subject to conditions, and, on the other, whether an advantage, once it has been granted to the product of any country, is accorded "unconditionally" to the like product of all other members. An advantage can be granted subject to conditions without necessarily implying that it is not accorded "unconditionally" to the like product of other members. More specifically, the fact that conditions attached to such an advantage are not related to the imported product itself does not necessarily imply that such conditions are discriminatory with respect to the origin of imported products. We therefore do not believe that, as argued by Japan, the word "unconditionally" in Article I:1 must be interpreted to mean that making an advantage conditional on criteria not related to the imported product itself is *per se* inconsistent with Article I:1, irrespective of whether and how such criteria relate to the origin of the imported products.

12. We thus find that Japan's argument is unsupported by the text of Article I:1. We also consider that there is no support for this argument in the GATT and WTO reports cited by Japan. A review of these reports shows that they were concerned with measures

that were found to be inconsistent with Article I:1 not because they involved the application of conditions that were not related to the imported product but because they involved conditions that entailed different treatment of imported products depending upon their origin.

13. Thus, the measure at issue in *Belgian Family Allowances* was "the application of the Belgian law on the levy of a charge on foreign goods purchased by public bodies when these goods originated in a country whose system of family allowances did not meet specific requirements." The panel determined that this levy was an internal charge within the meaning of Article III:2 of the GATT and found that it was inconsistent with Article I:1:

> "According to the provisions of paragraph 1 of Article I of the General Agreement, any advantage, favour, privilege or immunity granted by Belgium to any product originating in the territory of any country with respect all matters referred to in paragraph 2 of Article III shall be granted immediately and unconditionally to the like product originating in the territories of all contracting parties. Belgium has granted exemption from the levy under consideration to products purchased by public bodies when they originate in Luxemburg and the Netherlands, as well as in France, Italy, Sweden and the United Kingdom. If the General Agreement were definitively in force in accordance with Article XXVI, it is clear that the exemption would have to be granted unconditionally to all other contracting parties (including Denmark and Norway). The consistency or otherwise of the system of family allowances in force in the territory of a given contracting party with the requirements of the Belgian law would be irrelevant in this respect, and the Belgian legislation would have to be amended insofar as it introduced a discrimination between countries having a given system of family allowances and those which had a different system or no system at all, and made the granting of the

exemption dependant on certain conditions. "

14. Similarly, the reference made by Japan to the *Working Party Report on the Accession of Hungary* concerns tariff exemptions and reductions granted in the framework of co-operation contracts. The GATT Secretariat, in response to a request for a legal opinion, commented that "the prerequisite of having a co-operation contract in order to benefit from certain tariff treatment appeared to imply conditional most-favoured-nation treatment and would, therefore, not appear to be compatible with the General Agreement".

15. With respect to the Panel Report on *Indonesia - Autos*, we note that the panel determined that certain customs duty and tax benefits provided by Indonesia to imports of "National Cars" and parts and components thereof from Korea were advantages within the meaning of Article I, and that these "National Cars" and their parts and components imported from Korea were like other similar motor vehicles and parts and components from other members. The panel then proceeded to

> "... examine whether the advantages accorded to national cars and parts and components thereof from Korea are unconditionally accorded to the products of other members, as required by Article I. The GATT case law is clear to the effect that any such advantage (here tax and customs duty benefits) cannot be made conditional on any criteria that is not related to the imported product itself. "

16. Significantly, in support of the statement that "the GATT case law is clear to the effect that any such advantage (...) cannot be made conditional on any criteria that is not related to the imported product itself", the panel referred to the Panel Report on *Belgian Family Allowances*. As discussed above, that Panel Report dealt with a measure which distinguished between countries of origin depending upon the system of family allowances in force in their territories. We further note that, following this statement, the panel on *Indonesia - Autos* identified certain conditions which entailed discrimination between imports of the subject products from Korea and like products from other members, and found that these measures were thus inconsistent with Article I of the

GATT. The statement in the Panel Report that an advantage within the meaning of Article I "cannot be made conditional on any criteria that is not related to the imported product itself" must therefore in our view be seen in relation to conditions which entailed different treatment of like products depending upon their origin.

17. In sum, we believe that the panel decisions and other sources referred to by Japan do not support the interpretation of Article I:1 advocated by Japan in the present case according to which the word "unconditionally" in Article I:1 must be interpreted to mean that subjecting an advantage granted in connection with the importation of a product to conditions not related to the imported product itself is *per se* inconsistent with Article I:1, regardless of whether such conditions are discriminatory with respect to the origin of products. Rather, they accord with the conclusion from our analysis of the text of Article I:1 that whether conditions attached to an advantage granted in connection with the importation of a product offend Article I:1 depends upon whether or not such conditions discriminate with respect to the origin of products.

18. In light of the foregoing considerations, we reject Japan's argument that, by making the import duty exemption on motor vehicles conditional on criteria that are not related to the imported products themselves, Canada fails to accord the exemption immediately and unconditionally to the like product originating in the territories of all WTO members. In our view, Canada's import duty exemption cannot be held to be inconsistent with Article I:1 simply on the grounds that it is granted on conditions that are not related to the imported products themselves. Rather, we must determine whether these conditions amount to discrimination between like products of different origins.

Whether the import duty exemption discriminates in favour of motor vehicles of certain countries

19. We thus turn to the issues raised by the complainants to support their view that the import duty exemption involves discrimination in favour of motor vehicles of certain

countries. We begin by recapitulating the main arguments of the parties.

20. Japan argues that, by virtue of the eligibility restriction, the import duty exemption accorded by Canada on motor vehicles discriminates in practice by according an advantage to motor vehicles from certain countries while effectively denying the same advantage to like motor vehicles originating in the territories of other WTO members. Japan submits that, although the beneficiaries of the import duty exemption are ostensibly permitted to import motor vehicles of any national origin, in practice they have chosen and will continue to choose to import the products of particular companies from particular countries, in consideration of their previous history of transactions, capital relationships, and the nationality of companies investing in the beneficiaries. In the view of Japan, this means that the eligibility restriction and other conditions attached to the exemption effectively limit access to the advantage to certain members having the companies with which the beneficiaries have certain commercial relationships. Japan further argues that the discriminatory nature of the exemption was strengthened due to the fact that the list of eligible importers has been frozen since 1 January 1989. As evidence of the discriminatory character of the import duty exemption, Japan adduces statistics which show that in 1997, 96% of Sweden's imports into Canada, and 94% of Belgium's were duty-free (in both cases these were imports of Volvos and of Saabs, the latter partly owned by GM, with Volvo Canada and GM Canada both being eligible manufacturer beneficiaries). Japan compares this with just under 30% of duty-free imports for the whole of the European Communities, and of just under 5% for Korea and just under 3% for Japan. Japan also points to the fact that Volvos and Saabs are imported under the import duty exemption from Belgium or Sweden while like vehicles produced by Japanese manufacturers are imported subject to the MFN rate. We note that at the initial stage of this proceeding Japan's argument concentrated on the discrimination in favour of imports from Belgium and Sweden as compared with imports from Japan; subsequently Japan has also contended that there is discrimination in favour of imports from the United States and Mexico.